

Brownfields Study Group Meeting

February 28, 2003

Meeting Notes

I. Attendees

Kenn Anderson, Arth. J. Gall. Risk Mgt.
Sue Bangert, DNR
Kendra Bonderud, Leg. Fiscal Bureau
Loren Brumberg, DNR
Margaret Brunette, DNR
Bev Craig, City of Milwaukee (via phone)
Donna Ducharme, Delta Institute
Margaret Earnest, TN & Assoc.
Darsi Foss, DNR
Nancy Frank, UW-Milwaukee
Mark Giesfeldt, DNR
Maureen Hubeler, DNR
Bruce Keyes, Foley & Lardner
Larry Kirch, City of La Crosse
Mark Knaack, AIG Environmental
Dan Kolberg, DNR
Dennis Lawton, STS Consultants

Anthony Lehnert, Arth. J. Gall. Risk Mgt.
Kate Mawdsley, DOA
Peter McAvoy, 16th St. Comm. Health Center
Jessica Milz, DNR
Tom Mueller, TEMCO
Lance Potter, DNR
Michael Prager, DNR
Joe Renville, DNR
Andrew Savagian, DNR
Jason Scott, Dept. of Commerce
John Stibal, City of West Allis
Joy Stieglitz, Vandewalle & Assoc.
Joe Surette, AIG Environmental
Mark Thimke, Foley & Lardner
Sam Tobias, Fond du Lac County
Rebecca Vahle, MBF
Scott Wilson, Ayres and Assoc.

II. Welcome, Introductions, Agenda Repair

III. Fiscal Year 2002-03 – Updates

Andrew Savagian gave a brief update on the Brownfields Study Group's letter and packet, which were distributed to the governor's office and to various state agencies and legislators

Darsi Foss gave an update on the budget repair bill, which Governor Doyle signed into law this week – all Commerce funds were eliminated except for some earmarked funding and all DNR funds were eliminated except for SAG; the Environmental Fund loss \$1 million

Bob Strous (Remediation and Redevelopment Fiscal and Program Evaluation Section Chief), gave a brief update; RR put 15 proposed projects that were approved on hold until FY 04; about 21 projects that are currently in progress are also being put on hold; RR staff are deducting funds or telling contractors to stop work; RR is still holding about \$350,000 for spills and emergency drinking water, which is slightly less than what they normally keep on hand (about \$500,000)

Jessica Milz gave an update on the SAG grants; after a brief hold up, 45 signed contracts went out this week, some communities were starting their projects next week; for Green Space, did receive a number of applications, but after the budget bill became law and the funding was cut, letters will be going out notifying applicants

John Stibal: Did you score [the Green Space applicants]?

Milz: No, not yet

Jason Scott: The \$6.2 million is gone; we're sending out letters to all applicants informing them about what happened

Savagian will send the additional Commerce figures out to the Study Group via email

IV. 2003-2005 State Biennial Budget and Beyond

Foss, Lance Potter and Kate Mawdsley provided an update on the budget; key notes are below

Environmental Repair – The governor deleted the sunset clause and increased the per vehicle fee from \$9 to \$10.50

Land Recycling Loan Program (LRLP) – The summary of the Governor's proposed budget indicated that, "the present value of the Land Recycling Loan Program subsidies that may be provided during the 2003–05 biennium at \$12,000,000"; Maurine Hubeler from DNR explained that this does not mean there would be any additional money available for more loans, and that there is no money left to loan out if all current loans are approved.

Foss: The Study Group's policy changes for the LRLP are not included in proposed budget because there are no policy items in the budget

Tom Mueller: We'd like to continue that program; and we need to put a placeholder on to keep funding this program

Kendra Bonderud: any of the \$20 M that's there for LRLP is NOT for Clean Water fund; really any of the dollars used for the LRLP are a reallocation from the CW projects for the LRLP projects

DNR – Governor proposed cutting attorney positions and moving them to DOA; he's also proposing cutting 7 SEG-funded RR positions; cuts need to be made by end of first fiscal year, which is July 1, 2004

Study Group discussed how best to deal with the consolidation of the programs into DNR

Bruce Keyes: We should make sure we understand the new statutory language and existing rules before we move, and try to keep the rules that existed before and try to incorporate those into the new rules

Mark Thimke: The fees related to enforcement action language inserted by DNR into the budget undercuts the municipal cost recovery compromise

Thimke, Stibal and other members will get in touch with Darsi if they have alternative language to this proposal

Bonderud: Joint Finance has just announced the public hearings schedule, should be around late March to early April, and then they will start taking executive action after that

Mueller: It would help us if the agencies and counsel look though this language

Keyes: Yes, also please look at 2(a) and 2(b) and whether trusts are an eligible party as well as 3(3)

Stieglitz: In your research, if you find that for each one of these items an email to the group would suffice, then we may be able to avoid convening another meeting

Dennis Lawton: Also, please look at the eligibility of acquisition costs

Stibal: “Acquisition” is a word I’d be cautious about; in some places we have that word and in some places we don’t

Stieglitz and Sam Tobias: We also need language in there to bring Jason’s position over to the DNR

Members also wanted to include research on other issues, including tank removal, decommissioning, rehabilitation, and to also look at those grantees who did not get funded during this fiscal year and how to deal with that issue for the next fiscal year

DECISION: DNR And Commerce will work with legal counsel, DOA and LFB to research the budget language and get back to the Study Group via email with more information; then the Study Group will either meet in person or respond via email as to what they’d like to do

V. Expanding the State Brownfields Insurance Program

Kenn Anderson and Anthony Lehn from Arthur J. Gallagher Risk Management Services, and Mark Knaack and Joe Surette from AIG Environmental attended the meeting, on the invitation of the Brownfields Study Group, to discuss options for expanding the state’s brownfields insurance program

What type of coverage can you get?

- Can insure contamination you didn’t know was there, or more than you thought.
- Off-site contamination didn’t know was there.
- Basically, things you never saw coming. Cost over-runs.

The Massachusetts structure: covers sites that were being cleaned up, with cost cap and/or pollution legal liability; not everyone wants both, so there is an option; crafted to fit in with the state’s cleanup policy run by the state; is subsidized by the state

Questions

1. How does insurance mesh with NR700? Requires DNR doing review, very little staff. How would this fit into a WI program?
 - Insurance Co. makes sure that cleanup is in line with policy. Underwriter takes the risk.
 - Value is in having a program policy and not doing this site by site. Demystifies the costs.

- Not meant to be a burden.
2. When can you get the insurance policy?
 - Idea time = after a RAP
 - At very least, the Phase I. The farther you go, the cheaper the rate.
 3. Why is a program a benefit?
 - Price. Lower price at greater rate.
 - Pre-negotiated policy, no need to spend time negotiating individual policies
 - People would still have option to get private coverage.
 4. Is this just for VPLE or all sites?
 - Current program is for VPLE sites using natural attenuation. A new program could be for a broader scenario, maybe sites not in VPLE process.
 5. Would PECFA sites be included?
 - All of this would be talked about in the creation of a program. We are not talking about a forced program.
 6. How would the program be structured?
 - Yes, we want to explore the option. Need more details.
 - Ken Anderson made a 12-step program to create a program. We are at Step 2. Could, at best, take 10 months.
 - DNR will send out MA program web site to the study group.
 7. Would state be in a marketing role? Or just “fact sheets.”
 - More issues for discussion.

Per the Study Group’s request, DNR will work with and discuss this issue further with AIG and AJG, as well as review Massachusetts and California’s programs and come back to the Study Group with a draft proposal

LUNCH

VI. Great Lakes Redevelopment Initiative Fund

Donna Ducharme from the Delta Institute attended the meeting upon the invite of the Study Group to present information on the Fund; the Institute is not-for-profit and works in the Great Lakes region; Peter McAvoy and Joy Stieglitz from the Study Group are on their board; it’s purpose is to try and bring developmental and environmental issues together

Worked on putting together three types of funding: predevelopment assistance, loans and equity

Other notes on her presentation

New Market Tax Credits: Applied for \$24 million of the tax credits; the initial fund they’re trying to get off the ground would be a \$30 million fund; 20% of that would go for other projects and 80% would go for low-income communities; the idea is to start with the \$30 million and get it out the door, then apply for a much larger allocation; the tax credits are available for another 7 years

Loans: Senior and subordinate loans will be provided for the early stages of redevelopment, which includes land acquisition and environmental remediation, site preparation, demolition, building renovation, new construction, tenant equipment and improvements

Equity: Equity will be invested in a project once a property has been remediated and, if appropriate, a “no further remediation or action letter” or other assurance has been received

Ducharme: Trying to create a tool that’s flexible enough to fit in all the kinds of cracks and gaps that exist for brownfields right now; also trying to get low-interest loan money as well as money from tax-credit investors and banks

Ducharme: Can’t do some residential; new market tax credits are not made necessarily for that; any kind of commercial, industrial, retail can be done; TPL is doing some open space projects that have some commercial value, and we’re interested in working with them across the Great Lakes

Stieglitz: 80% to low-income, can that just be a neighborhood and not community?

Ducharme: Yes, you start by seeing if the census tract qualifies, and if that doesn’t work, you can go in and look at the blocks

Stibal: How many blocks do you have to assemble to qualify that site for the tax credit

Ducharme: It would be the block surrounding the site, the contiguous blocks

Stibal: What kind of rate of return for the investors are they looking at

Ducharme: Briefly went over the chart hand out

Stibal: What kind of interest would they get for the low-income communities?

Ducharme: Depends on what we can get from the government

Michael Prager: is there a Wisconsin firm that’s similar?

Stieglitz: WHEDA is a similar firm

Lawton: When do you plan on sending out your first loan(s)?

Ducharme: Regardless of what happens with the New Market Tax Credits, we’re moving ahead, so even if we have \$7-8M, we’re starting, and we hope to start this summer

Some Study Group members volunteered to work on promoting this fund, and the Study Group agreed to put together a letter of support for the fund

For more information: Donna Ducharme, the Delta Institute, 312-554-0900, ext. 12; web site address: www.delta-institute.org

VII. Non-Fiscal Issues – Next Steps?

Sue Bangert briefed the Study Group about Senate Bill 29 – couple of clarity issues for “special waste”; this did not make it out of the Assembly last year (please see Legislative Reference Bureau analysis handout for more information)

Tobias: So this is a way to get rid of some less problematic materials in a cost effective manner?

Foss: It gives DOT, their public entities and their contractors protection from getting sued later because those materials may cause a problem; the end result is protecting them from liability

Mueller: Do you know if this has been reintroduced into the Assembly?

Bangert: I don’t think it’s been reintroduced there yet

For more information on this issue please contact Paul Koziar with the DNR’s Waste Program at 608-267-9388, or paul.koziar@dnr.state.wi.us

Study Group went over the list of non-fiscal recommendations and discussed several issues, including expanding the ER TIF language and language for the DNR about making deed instruments enforceable; **Foss will get this language out to the Study Group via email**

Nancy Frank: We need to be careful what we’re calling “debris”

Keyes: I agree, we could end up tearing down barns

Foss: Maybe there’s a way to put some language in there that better defines what you want to do

Darsi and others will put together language better defining this issue

Study Group members agreed they will approach their legislators to discuss introducing separate legislation for the non-fiscal recommendations of the group

VIII. One Cleanup Initiative

Foss gave a brief update; Study Group is working with EPA folks to create a one-cleanup plan; Region V is taking the lead and working with the Study Group as a model; looking at a potential Memorandum of Agreement (MOA) to cover all regulatory programs (e.g. RCRA, TOSCA, etc.)

Adjourn